

A

517.2 25
3

LETTER

TO THE

AUTHOR

OF

Academico
No

*A FURTHER INQUIRY into
the Right of Appeal from the Chancellor
or Vicechancellor of the University of Cam-
bridge, in Matters of Discipline.*



L O N D O N,

Printed, and Sold by M. COOPER, at the *Globe*, in
Pater-noster-Row. MDCCLII.

Geometric Probability

Я О Н Т И А



A

LETTER, &c.

SIR,

WHEN your first *Inquiry* came out, I sat down to read it with that Respect which was due to the Station of the supposed Author. And tho' I must own, I had no great opinion of your Talents as a Reasoner, yet I expected, that your Industry, and Opportunities of getting Information, would, at least, have supplied me with Plenty of Hints and Circumstances, which I might have laid together, in order to form my Judgment upon a Point of so much Importance to the University.

But I soon found myself disappointed in my most moderate Expectations. You kept yourself close to the Letter of our Statutes; which, I thought, was a wrong Course towards settling the Dispute. For I long since observed, that the Statutes of the University, tho' they gave several Directions about the *Practice*, yet were quite silent about the *Right* of Appealing. And I saw nothing in your whole Pamphlet, which could persuade

me to think that my Observation was ill-grounded. You did not satisfy me; either that we had not this Right in *Causes of Correction and Discipline*, or how we became possessed of it in *civil Causes*.

A little Time after, you know, another Pamphlet was published, upon the same Subject, intitled, *The Opinion of an eminent Lawyer, &c.* As common Rumour had whispered the Name of this eminent Lawyer, I bought his *Opinion* with great Eagerness, presuming, that his Authority, whatever Side of the Question he took, must at once put an End to all Controversy, to all Feuds and Animosities amongst us. Here I saw a Lawyer, who is superior to all the Praise which you or I can bestow, declaring himself fully and decisively for the *Right of appealing from the Vice-chancellor to the University, in all Causes of Correction and Discipline, as well as in civil Causes where two Parties are litigant.* The Editor of this Opinion, as if he had foreseen your Unwillingness to submit to any single Authority, produced to you the concurring Opinion of the late Dr. Andrews. That great Civilian had declared, on the Case of Mr. Campbell senior Regent of the University, whom a Vice-

Vice-chancellor had most arbitrarily suspended from his Degrees for stopping Graces in the *Caput*, that “ Appeals lay in all Cases, “ where any Party may be aggrieved, except “ where they are expressly prohibited ; and “ that those Laws which restrain Appeals are “ termed *odiosæ*, and must be interpreted in “ the strictest Sense.”

Although I could not dare to withstand the unexceptionable Authority of those two eminent Men, yet my Understanding would still have wanted some further Conviction ; had not Dr. Andrews declared, that the Canon and Civil Laws prevail in the University ; had not Sir Philip York declared, that *the Proceeding of the Vice-Chancellor's Court is according to the Canon and Civil Laws (a)*. And it is allowed on all hands, it is allowed even by you, Sir, that “ Appeals are always “ admitted in those Courts, where the Civil “ and Ecclesiastical Laws are of Force ; “ where Penance, Suspension, Deprivation, “ or any Censure is inflicted as the Punish- “ ment of a Fault (b).” I could now give a Reason, why no Statute of the University

(a) See Dr. Bentley's Case, in *Raymond's Reports*, p. 1344.

(b) Inquiry, p. 26.

had expressly granted the Right ofAppealing in any Case; why the University in their ancient Disputes about this Right, did not refer to their particular By-laws or Statutes for a Determination, but to the general customary Laws of the Place, the *Jus canonicum et civile* (c).

As I think it the Duty of every Man in every Station to make himself acquainted, as far as he has Opportunities, with the History and Constitution of the Government under which he lives; I held myself extremely obliged to the *Editor of the Opinion of an eminent Lawyer*, for his learned and accurate, tho' *short historical Account of the Jurisdiction of the University*. I could not however forbear blaming him for not directing his Readers to the Places where those Authorities were to be found, by which he sup-

(c) De Appellationibus a Delegatis.

In Dei nomine, Amen. Nos D. Buckmaister, Inceptor Dakyns, Mri. Myddlyton, Longforth, & Pomell, auctoritate nobis commissa, decernimus ac pro firma Sententia determinamus, quod licet unicuique in suâ causâ appellare a Judicibus Delegatis per Universitatem ad eandem Universitatem, modo id fiat juxta Juris exigentiam, hoc est, si antea ab eodem secunda vice in eadem causa appellatum non fuerit. Quod si antea bis appellaverit, neutquam tertio appellare licebit, quum id prorsus sit vetitum tam per *Jus civile quam canonicum*. Lib. Proc. Jun. fol. 132.— This Determination of Delegates was given about the Year 1537.!

ported

ported his Narrative. But having heard that Mr. Hare, who lived in the Time of Q. Elizabeth, had made a large and valuable Collection of our Charters, Grants, Privileges, &c. I got his Books into my Hands, and by the Help of the Author's Dates easily discovered those Episcopal Rescripts and other Papers, upon which he placed his *Vindex et Patrona libertatis*, his *Idol of an Appeal to the University* (d): And, I confess, this Idol looked with so benign and favourable an Aspect on the University, that I could almost worship it myself: I should certainly oppose the irreligious Fury of any rash Zealot, who should attempt to kick it down, either with his own profane Foot, or, as you more elegantly express yourself, *by the very Steps which he took to compleat it* (e).

After this Pamphlet of your Adversary had been read and approved for near twelve Months, you had the Hardiness publickly to oppose all his Authorities and all his Arguments; you pretended even to laugh at his severe Animadversions on the idle Reasonings and overbearing Airs of your first Performance. Indeed he shewed you little Mercy: Less

(d) Furth. Inq. p. 15.

(e) Ibid.

than I could have wished, but full as much as you deserved.

This your *Further Inquiry* is the Occasion of my Letter to you : In which I shall pass over the Wit and Raillery, and smart Retorts with which your Book is abundantly stored ; and confine my Remarks to the more grave and serious Parts of it, your Arguments and Objections ; which I shall shew to be no better than confident Assertions without Proof, or random Guesses, or barefaced Mistakes.

That we may understand one another the better; as we go along, let us fix, what are the principal Questions in which we agree, and about which we differ.

You are pleased to allow, that *the Vice-chancellor is accountable for the Exercise of his Authority in Matters of Discipline*, somewhere (f). So far we are agreed. Indeed I have heard but of one Wretch, who has the Shamelessness to profess himself an Enemy to Appeals in general. The material Point, about which we differ, is, that you would have the Vicechancellor accountable either to *the King in Council* (g), or,

(f) Furth. Inq. p. 48. note x.

(g) Inqu. p. 44. and Furth. Inq. p. 74.

supposing him empowered to inflict Ecclesiastical Censures, as he most certainly is, to the King in his Court of Chancery (b) : Whereas we would have Appeals lie from the Vicechancellor to the University ; ad Corpus Universitatis, id est, ad cetum Regantium & non Regantium (i).

Before we enter upon our Argument, let me make one preparatory Reflection ; and it is a Reflection of no small Moment.

We would have Grievances redressed among ourselves, within a short Time, without any Disturbance, and at a small Expence : You would have every Complaint against a Vicechancellor prosecuted with the unavoidable Delays, Fatigue, and intolerable Charges of a Trial before the King in Council, or in his Court of Chancery. E

(b) Furth. Inq. p. 60. note i.

(i) These Words are taken from the Charter Ann. 2 Jac. i. in which he orders that an Appeal should lie from the Vicechancellor, where he acts as Visitor of those Colleges which have no special Visitor appointed by their local Statutes, to the University, ad Corpus Universitatis, id est, ad cetum Regantium & non Regantium, prout in aliis casibus Appellationum antebac usitatum et consuetum fuit. Now it is worth observing, that Appeals lie in Matters of Correction and Discipline, from a Master of a College to the Visitor, and consequently by this Charter of Jac. i. from the Vicechancellor to the University. And a Visitor too is generally looked upon as an absolute uncontrollable Judge.

call

call these Charges intolerable, because they necessarily amount to more than most Fellows of Colleges are able to defray, even if they converted the Furniture of their Chambers and their Books into Money ; even if they could sell the Fee-simple of their Fellowships. Do not drive us into such Extremities. Do not labour to interrupt the learned Leisure, and ruin the little Fortunes of the Scholars of *Cambridge*. Catch Pity from the Breasts of Kings. Consider the exemplary Tenderness of our Royal Benefactors. Why did they indulge the University with such extraordinary Privileges and Immunities ! Why did they extend its Jurisdiction to such ample Measures, and forbid all other Courts to intermeddle in their Affairs, but, to use their own Words, *pro salvazione Privilegiorum suorum et quiete Universitatis—ad finalem Effectum quod Scholarès Universitatis Studio et Disciplinæ ibidem vacare valeant quietius in futuro—(l) pio et quieto studiorum voto ac Tranquillitati consulentes—(m) ut et in abundantia libentius, et in tranquillitate securius in Studiis desudarent : quia, ut recte dictum est, haud*

(l) Charter, 7 Rich. ii.

(m) Charter, 3 Eliz.

facile emergunt, quorum Virtutibus obstat Res angusta domi (n). You, who are so forward to remind Men of their Obligations, that you press their Consciences with Oaths which they never took (o), remember your matriculation Oath ; and be a little more tender of the Privileges and approved Customs of the University of Cambridge.

But we solicit no Favours ; we ask only as Men and Scholars, the free Enjoyment of our just Right, a Right essential to our Constitution. And that this Right of Appealing from the Vicechancellor to the University in Matters of Discipline is essential to the Constitution of the University, your Adversary hath proved beyond all Power of reasonable Contradiction.

I shall now consider your Objections, as far as Method will permit me, according to the Order in which you have ranged them.

Your first Attack is made upon the *short historical Account, &c.* The Author had informed you, that “ the University of Cambridge was possessed of a Jurisdiction over

(n) Chart. 2 Jac. i.

(o) The *Further Inquiry*, p. 53. and 54. told his Adversary, that he had sworn to pay Honour and Respect to the Heads of Colleges, as the Chancellor’s Representatives by Statute.

“ its

" its own Members as *Clerici*, many Years
 " before any was granted to it by Charter
 " from the Crown." To this you answer
 by telling a Story, that " the ancient Charters
 " and Records of the University were burnt
 " by the Townsmen in a Riot, in the Time of
 " *Richard the Second*; " and very logically
 infer from hence, that " the Jurisdiction
 " granted by our *present* Charters, is very far
 " from being the first we derived from the
 " Crown (*p.*). " It is not easy to explain what
 you would mean by this curious Passage.
 You cannot seriously mean that all the Charters
 which were granted by the Crown be-
 fore this unfortunate Riot, are no where ex-
 tant. Why, Sir, they are extant in the same
 Place where our *present* Charters are, among
 the Records in the Tower of *London*; and
 Mr. *Hare* has transcribed them all into his
 Books. There you may see Charters and
 Grants of *Ed. III.* *Ed. II.* *Ed. I.* and *Hen. III.*
 Nay, in *Hare's Collection*, you may see the
 Charters of King *Cadwallader*, and that re-
 nowned Prince *Arthur*, and the pretty Tale
 of *Gurguntius*, copied, not indeed from the
 Records in the Tower of *London*, but from

(*p.*) *Farth. Inqu.* p. 5. note,

the black Book of the University. And you may see a most excellent Use made of this venerable *black Book*, in Dr. Caius's History of the *Antiquity of the University of Cambridge* (q). Nor can you mean to insinuate, that the University had any *Cognizance of Civil Causes* before the Time fixed afterwards by your Adversary. For the Original of the University's first Petition for civil Jurisdiction, and the first Grant of it from the Crown, is likewise preserved in the Tower of *London*. Perhaps I have been hunting all this while after a Meaning where none was intended.

But you are resolved to give no Quarter to a Man, who has dared to differ in Opinion from you. You will not suffer him so much

(q) Lest this Further Inquirer should begin to apprehend, that no Charters at all were burnt, I will inform him what they were. By the Process in Parliament against the Townsmen, Ann. 5 R. ii. it appears that no other Charters were burnt, but those which the King then upon the Throne had granted to the University. The Article exhibited upon this Head is as follows: Item Major, Baillivi, Burgenses, et Communitas supradict. per minacias mortis coegerunt praedictos Magistros et Scholares eis liberare et tradere *Cartas* aliasque literas patentes et privilegia sub Sigillo Regis qui nunc est confignata, ac dictæ Univeritati concessa. Quas *Cartas*, privilegia, et literas patentes dicti Major, Baillivi, Burgenses, et Communitas in Foro dictæ villæ violenter cremaverunt, *Hare*, vol. i. p. 196. Ex *Turr. Londin.* And this Loss that same King amply supplied by Charter, Ann. 7 of his Reign. Nay, Copies of those very Charters which were burnt, were taken by *Hare*, ex Rotulo Cartarum in Turre Londinenſi.

as modestly to conjecture, that *this Jurisdiction, being Ecclesiastical, seems to have been originally derived from the Bishop of the Diocese.* No! you reply, *This Jurisdiction must have derived from the Crown,* because *the University of Cambridge is of Royal Foundation, and, as such, claimed so long ago as 1381.* for a Petition then presented in behalf of the University to the King in Parliament, recites, *cum dicta Universitas Cantabrigiæ sit ex ordinatione et fundatione illustrium progenitorum vestrorum (r).* You should have told your Readers, Sir, where they might find this wonderful Petition which supports your wonderful Argument; and then you should have shewed what Authority the Petitioners had for reciting those Words. You would have eased me of much fruitless Trouble; for I have made diligent Search after it to no Purpose. Tho' I believe, that I have discovered the Cabinet in which you met with a Chip of this inestimable Jewel. If I am mistaken, the Mistake lies plainly at your Door. In the 33d Vol. of Mr. Baker's MSS. in the University Library, is a Copy of Letters to and from Archbishop Laud con-

(r) Furth. Inqu. p. 6.

cerning his Power of Visitation, with a Brief of Reasons wherefore the University is exempt from Archiepiscopal Visitation. These Papers you have seen, for you quote them (s). And in these Papers it is set forth, that in the Time of the Riots in Cambridge, in the Reign of R. II. the Petitioners for the University used these Words, Cum dicta Universitas sit *ex ordinatione* illustrium progenitorum vestrorum. The Words *ex fundatione* are not there. And you need not be informed of Mr. Baker's Character as an accurate Transcriber.

Although it be Matter of Amusement and Curiosity, rather than of real Use, to trace this Seat of Arts and Sciences up to its remote and abstruse Origin; yet a Hint or two, pointing what it once was, may serve to improve your Conceptions of what it now is. For Comparisons and Contrasts oftentimes adorn as well as explain. Those, who have taken all their Ideas of the University of Cambridge, from the illustrious Figure which it makes with a Burleigh or a Duke of Newcastle at its Head, may be surprized to hear,

(s) Furth. Inqu. p. 12. note w.

that its Birth was mean and obscure. Yet it was derived perhaps from some poor dirty Monk, sent hither from a neighbouring Convent to teach Children the Elements of Language, under a Licence from the Bishop of the Diocese. For all the little Learning of this Kingdom was once engrossed by Monks. From the Encouragement which this *Founder of the University* received, other Masters in other Faculties at different Times came and set up Schools in the Town. These Masters were therefore afterward called *Magistri Regentes in Scholis* (*t*) ; and those who taught in different Faculties were distinguished from one another by the Titles of *Magistri regentes in Grammatica*, in *Theologia*, &c. (*u*). When the Place had gotten some Fame, many Students resorted to it, for the Benefit of Learning ; till they grew so numerous, that the Schoolmasters, who could reward and punish only their own Scholars, found it convenient, with the Approbation of the Bishop, to unite themselves into a Society with one Person at their Head. This their chief Magistrate they elected out of their own Number, and

(*t*) See *Clement. De Magistris & ne aliquid &c. cap. inter.*

(*u*) See *Statuta vetera Acad. paßim.*

delegated

delegated to him an Authority over all the Scholars, reserving to themselves the supreme Power of controuling his Acts in a general Assembly. The Bishop, whose Concurrence was necessary to give a Sanction and Validity to all they did, confirmed this Person in his Office under the Title of Chancellor, and invested him with Ecclesiastical Jurisdiction; whereby he might be enabled the more effectually to chastise and correct Offenders.

Some Parts of this summary Account of the Rise and Settlement of the University may depend on probable Conjecture only, and are incapable perhaps of direct Proof; yet the more material Parts of it will receive certain Confirmation from the Testimonies I shall presently produce from the Records of the Bishops of *Ely*: Recommending in the mean Time one Circumstance to your Consideration which gives Credit to the whole. The first authentic Instrument we have of any Royal Favour conferred on the University of *Cambridge*, is a Letter of *Hen. III.* to the Sheriff of the County. It begins thus: “*Rex Vicecomiti Cantebrigiae salutem. Scias, quod cum in Villa nostra (not as the Style ran in Aftertimes, in Academia nostra) Cantebrigiae, ubi convenerit multitudo studentium,*

" plures sint Clerici rebelles et incorrigibiles,
 " qui cum delinquent, a Cancellario et Magi-
 " stris se corripi nolunt et castigari; et plures
 " malefactores, inter quos quidam sunt sub
 " specie clericali, mentientes se esse quod non
 " sunt, *a Cancellario et Magistris Scholarum,*
 " cum delinquent, juxta morem Scholarium
 " se justiciari non permittunt. Pro eorum
 " audacia coercenda et Studentium tranquil-
 " litate prospicienda — The King then pro-
 " ceeds commanding the Sheriff either to
 " commit such Rebels to Prison, or to drive
 " them out of the Town. He was not how-
 " ever to inflict these Punishments, but *ad*
 " *mandatum Episcopi Eliensis*: And the
 " Chancellor and Masters were first to notify
 " the Offenders to the Bishop. The King at
 " the same time sent a Letter to the same
 " Purpose to the Bishop of Ely (x)."

It is an absurdity, you say, not to be paral-
leled, that the Crown should found a Body
corporate, consisting of a Head and subordinate
Members (y), and yet neither prescribe Rules
for the Government of it, nor authorize it to

(x) *Hare*, vol. i. p. 13, and 14. Ex *Rotulo claus. de Ann. 15 Hen. iii.* in dors. In *Turr. Londin.*

(y) The Further Inquirer assures us, (p. 6. note l.) upon the Authority of *Speigel* and *Calvin*, that *Universities, non membris solum, sed et capite constant*. And he intimates, that the *Body po-*

prescribe Rules for itself (z). We have considered your Proof of the University being of Royal Foundation; we shall now see who had the original *Ordination* of it; *who prescribed Rules for the Government of it, and authorized it to prescribe Rules for itself.* For you proceed to take notice of those Episcopal Rescripts which the Editor of the Opinion had introduced to your Acquaintance. But you have either grossly misunderstood, or shamefully misrepresented them. If you will give yourself the Trouble of perusing them again, you will find the following Extracts out of them to be fairly drawn.

By the Rescript of *Hugo Balsam*, dated 1264, it appears, that Appeals lay from the Chancellor to the University, without the least Limitation or Restriction; without the least Distinction, which you make, betwixt *Matters of Academical Discipline, and Matters of Ecclesiastical Nature only* (a).

litick of the University of Cambridge, was finished at one Stroke, Head, Limbs, and all; as the Form of Government in Old Rome was by Romulus. See Dr. Chapman's Essay on the Roman Senate. He ridicules the Folly of supposing, that a Community should choose a Head to govern them; and afterwards controul any Acts of his Government. Surely he must forget, that Appeals lay from a King of Rome, to the People his Constituents.

(z) Furth. Inqu. p. 6.

(a) Furth. Inqu. p. 8. See Hare, vol. i. p. 326. Ex antiquo Registro Elienium Episcoporum

The Rescript of the same Bishop in 1276, not only limits the Jurisdiction of the Chancellor of the University, and the Archdeacon of *Ely*, but “ prescribes likewise Rules for the Government of the University. It ordains, that, if any Person had Cause of Complaint against a Scholar of the Magister Glomeriae, (who was the Regent-Master in Grammar) he should apply to the Magister Glomeriae for Redrefs, who should have full Power to hear and determine all Causes in which any of his own Scholars were *ex parte rea*: Enjoying herein the same Privileges which other Masters had, where their Scholars were concerned. But if the Cause related to the Rent of Houses taxed by the Masters and Burgesſes (*b*) ; or if the Enormity of the Crime was so great as to require Imprisonment, or Expulsion from the University (*c*) ; that then, and then only,

(*b*) See *Hare*, vol. i. p. 19. 6. and Statut. vet.

(*c*) The F. Inqu. could see that *Expulsion is a Punishment merely academical*: And Ld. *Coke* had informed him, that no Ecclesiastical Power could reform and correct by Imprisonment, p. 11. note. But if he had taken any Pains to inform himself of the History of the University, he might have known, that *Hen. III.* had granted to the Chancellor a Power of Imprisonment, *Hare*, vol. i. p. 15. This Power of Imprisonment was afterwards confirmed by an *Inspeccimus* of *Edw. i.* in which he enumerates former Grants of the Crown to the University; and these were only the Grants of his Father *Hen. iii.*

" the Cause of a Scholar of the Magister
 " Glomeriæ as well as of the Scholar of
 " every other Master should be cognizable
 " before the Chancellor. That an Appeal
 " should lie from the Magister Glomeriae to
 " the Chancellor, in the same Manner as it
 " lay from every other Regent-Master." The
 same Rescript contains many Injunctions
 about the Meaning and Validity of several
 Statutes of the University. One of those In-
 junctions is to this Effect: " Whereas by one
 " of the Statutes made by the Chancellor
 " and Masters which we have inspected, no
 " Person is to be deemed a Scholar, unless
 " within fifteen Days after his Arrival at the
 " University he enters his Name into the
 " Matricula of some Regent-Master; and
 " whereas several Regent-Masters, not pay-
 " ing a due Regard to this Statute, have en-
 " tertained and protected several Persons as
 " Scholars, who were not matriculated; We
 " injoin under the Penalty of Excommuni-
 " cation, that no one shall entertain and pro-
 " tect as a Scholar any Person who had not
 " observed the Tenor of the forementioned
 " Statute (d)."

(d) *Hare*, vol. i. p. 33. Ex antiquo Registro Eliensem Episcoporum.

Before we consider the Rescript of *Simon de Monteacuto*, two intermediate Events, in which the Discipline and Jurisdiction of the University were deeply interested, demand our Attention.

When *William de Luda* was Bishop of *Ely*, the Statutes, Privileges and Customs of the University were all going to Wreck, and the whole Frame of its Government was well nigh dissolved by the unwarrantable Incroachments and Innovations of the Chancellor and his Adherents on one side, and by the vigorous Opposition of the Regent-Masters in Theology and in the other Faculties and their Adherents on the other side (e).

(e) *Sententia, &c.* In Dei nomine, Amen. Pateat universitas, quod, cum inter venerabilem virum Magistrum Henricum de Boyton Cancellarium Universitatis Cantebr. una cum sibi adherentibus ex parte una, et alios Magistros in Theologia et in ceteris facultatibus actualiter ibidem regentes cum sibi adherentibus, ex altera, Super Statutis et Consuetudinibus ac Privilegiis Universitatis ejusdem, ut asserebant Magistri praedicti, ex diu retro temporibus pacifice usitatis, et etiam excessibus faelis et poenis contentis contra transgressores omnium praeforum, et novis consuetudinibus ac Interpretationibus per disputationes et cautelas frequenter objectas, ad laendum vel saltem quomodolibet ponendum in dubio omnia praedicta vel partem eorundem, sine quibus illa utilis et laudabilis congregatio non posset in doctrina et pace salvari; ac petebant cum Instantia super iis omnibus, reduci in statum eundem quo fuerint temporibus praedicti Cancellarii non regentis, donec salvo jure Dom. Episcopi judicio Universitatis ejus et aliter ordinatum. Dom. Cancellario quoad quosdam articulos contrarium affirmante, et se docere parato Universitatem per Procuratorem ejusdem usurpare

But all Diffensions were healed ; Peace, Quiet, and good Order was restored to the University, by a single Sentence of the Bishop's Official. The Sentence was to this Purpose :
 " That the Statutes, Privileges, and Customs
 " of the University, should be observed in all
 " their Parts according to their grammatical
 " Meaning ; and the Lord Bishop's Universi-
 " ty of Cambridge should be restored to the
 " same State in which it stood before the then
 " Chancellor was elected. And if any
 " Doubts should arise in Aftertimes, concern-
 " ing their Statutes, Privileges, and Customs ;
 " such Doubts should be resolved by the ma-
 " jor Part of the Regents in the said Univer-
 " sity." This Sentence was passed after a judicial Process in St. Michael's Church, Cambridge, in the Year 1294 (f).

About eleven Years after this, and not sooner, the University began to take *Cognizance of civil Causes*, by virtue of a Grant from Edw. I. in the 33d year of his Reign. As you have not thought proper to contro-

volentem Jurisdictionem suam quam a Dom. Episcopo in sua confirmatione recepit, et alias multas Injurias sibi in contemptum Dom. Episcopi et suae Jurisdictionis fuisse illatas. Cumq; &c.

(f) Hare, vol. i. p. 44 a. Ex antiquo Registro Eliensis Episcoporum. In the same Registry is the Form of confirming the Chancellor in his Office, by the Bishop, after he had been elected by the University.

vert this Point with your Adversary, tho' it was of Importance to the Dispute, I shall only refer you to one Authority for the Truth of the Fact (*g*).

This Grant of civil Jurisdiction brought the *civil Law* into use in the University. And, however it may appear in your Eyes, who seem afraid to look higher up than the Times of Queen *Elizabeth*, and unwilling to allow us any Rights or Privileges but what her Royal Statutes gave us (*b*) ; it was constantly used as well as the *Canon Law*, down to that Queen's Reign. Queen *Elizabeth*, Sir, if Sir *P. Yorke's* Authority hath any Weight, could not erect a civil Law-Court by her Royal Prerogative (*i*). Custom was the only Sanction of these Laws in the University, until an Act of Parliament passed (13 *Eliz.*) confirming our ancient Charters and Privileges.

As before 33d *Edw. I.* the *Canon Law* alone, so after that Period the *canon and civil Laws* together were made the common Rule by which the Proceedings in our Courts were regulated.

(*g*) *Hare*, vol. i. p. 49 a. Ex Rotulo patentium de 33 Ed. I. parte prima in Turr. Londin.

(*b*) *Furth. Inqy.* p. 18.

(*i*) *Raymond's Reports*. Dr. *Bentley's Case*, p. .

Accordingly *Simon de Monte acuto* in his Rescript of 1341, knowing, that he had no Authority to interpose in civil Concerns, “ directs his University to proceed in Causes “ quae sunt mere civiles secundum Statuta et “ Consuetudines suas, without paying any Regard to Inhibitions issuing from him or his Official or Commissaries. And, to prevent frivolous and vexatious Appeals in all other Causes, without distinguishing between twixt Matters merely Ecclesiastical, and Matters merely Academical, without one Syllable of testamentary Causes, and others of contentious Jurisdiction in foro Ecclesiastico (k); he ordaineth and indulgeth, that every Appellant, before an Inhibition be granted by the Bishop or any of his Officers, shall swear—that he hath appealed gradatim in the University—that he hath deposited the Caution-Money required by the Statutes or Custom of the University—and that he used all due Diligence according to the same Statutes and Custom, to get Judges delegate appointed. *In Querela etiam querelans Juramentum praefitet ante omnia, quod non malitiose sed propter defec-*

(k) Furth. Inqu. p. 9.

“ tum

"tum *Justiciae ab illis a quibus Justicia hu-*
 "jusmodi petitur denegatae tantummodo que-
 "relatur." And a Denial of Justice is surely
 a just Ground of Complaint. Accordingly
 we see, that in those Days, as well as in these,
 Men were apt to complain of their Judges,
 for being short and deficient in point of Ju-
 stice, or for refusing to administer it (1). After
 these Indulgencies shewn to the University,
 the Bishop concludes his Rescript with
 a strict Inhibition. *Caeterum cum naturali*
Instinctu devotio filialis ad paterna Jura il-
libata servanda eo promptior esse debeat, quo
sili in patre gratiam sentiunt ampliorem, vobis
et successoribus vestris in Universitate pae-
dicta injungimus et etiam inhibemus, ne vos
vel illi ullis unquam temporibus statuta quo-

(1) Furth Inqu. p. 9. As this Author seems to be entirely ignorant of the Difference betwixt an Appeal and a Querela, I will inform him in the Words of a Writer of no mean Authority. *Querela* potest accipi largo modo, et strictè seu propriè. Quando accipitur *largo modo*, ponitur pro omni remedio per quod quis recurrit ad superiorēm per viam Gravaminis, et tunc includit *Appellationem*—Secundo modo accipitur *strictè*, et tunc *differit ab Appellacione*. Nam ille dicitur adire *Judicem* per querelam, qui non potest appellare propter aliquod *Impedimentum Juris*, et sic tunc dicitur *propriè querela quando circa remedium Appellationis *Judex* aditur*. Est enim querela, quando oppressus reclamat, ut sibi per viam *Juris succurratur*; et habet locum querela ut plurimum in aëribus extrajudicitalibus; vel per aliquam interlocutoriam [Sententiam] sine cause cognitione prolatam. Marantaæ Aur. Spec. par. vi. de *Appellat.* n. 114.

vis edatis colore, Nobis vel Successoribus nostris seu nostrae Ecclesiae Eliensi nostraeve Jurisdictioni episcopali seu consuetudinibus nostris praejudicialia; nisi Episcopi Eliensis qui pro tempore fuerit praehabitis ad haec consilio et assensu. Et si (quod absit) in contrarium aliquid attemptatur illud volumus esse nullum et viribus omnino carere (m).

You must now, Sir, wink hard not to see, that it is impossible for us to suppose, that Matters of academical Discipline were once cognizable by the Bishops of Ely, and afterwards finally determinable by Delegates appointed by the University (n). For every fair Inquirer must see clearly, from the Authorities here produced, that both before and after the Acquisition of civil Power, Appeals lay in *Causes of Correction and Discipline*, from each Regent-Master to the Chancellor; and from the Chancellor to the University. And if any Party thought himself aggrieved, and could not get his Appeal heard at home, he might apply for Redress to the Bishop's Court

(m) *Hare*, vol. i. fol. 136. b. Ex Registro Magistri Thomae Marhaunt. Whether the University was exempted from the Authority of the Bishop of Ely, by Papal Bull or Royal Charter, doth not much concern us. It is sufficient to know, that no Bishop of Ely has exercised Jurisdiction over it, for 300 Years.

(n) *Forth. Inqu.* p. 11.

by a Querela ob denegatam Justitiam. The Wisdom of our Ancestors looked upon a Liberty of Appellation, as the Support not only of Justice, but of Quietness in the University.

You have Sagacity enough however to discern, that the Question before us depends in some measure ont the *Canon Law*; and have therefore collected a great Number of venerable Names, such as Dr. Duck, Archbishop *Whitgift*, Bishop *Stillingfleet*, *Prynne*, and Lord *Coke*; and in truth you have collected nothing but their Names, not their Reasonings or their Authorities; to shew, that this Law is no longer of Force in the University (o). Dr. Duck says, you tell us, that *Cancellarius utriusque Academiae causas adjudicat per Jus civile et consuetudines suas*. Why, Sir, the canon Law was one of the *Con-suetudines Academiae*: And you ought to have known, that it was introduced into this Kingdom and prevailed in it only by *Custom*. Archbishop *Whitgift's* Authority we shall observe by and by. Bishop *Stillingfleet* says nothing to your Purpose. *Prynne* says nothing to your Purpose, allowing what he says to be true. Lord

(o) *Farth. Inqu.* p. 15--21.

Coke says nothing to your Purpose. I do not assert without Grounds. For I shall presently prove, that Laymen can decree a Sentence of Excommunication; and for this they have the Authority of an Act of Parliament.

But before I produce my Proofs, I cannot help expressing a little Displeasure at your unkind Treatment of the Author of the *Historical Account*, &c. You have not only falsely fathered upon him *this Child of his own INVENTION, this favourite Ecclesiastical Jurisdiction* (*p*), which he neither *invented* nor begot; but you have as falsely accused him of murdering his favourite Child in the Reign of *Hen. VIII*; and what is more extraordinary, you justify the horrid Murder (*q*). The poor Child is alive yet, Sir, and that Author knows it is alive; tho' it be in a most miserable Condition, sickly and almost starved through the Negligence of it's Nurses.

The University of Cambridge, Sir, was visited as an Ecclesiastical Body, not only in *Hen. VIII*'s Time, but in the Reign of *P& Mary*, by Cardinal *Pool*, under a Commission from the Pope. It had been visited before in the Reign of *Edw. VI*; and was visited

(*p*) *Furth. Inq.* p. 15.

(*q*) *Furth. Inqu.* p. 18. note. P. 20, 21.

in Q. Elizabeth's Reign, under an Ecclesiastical Commission from the Crown, as *Head of the Church* (r).

Again, a Court possessed of Ecclesiastical Jurisdiction, must have a Power to inflict Ecclesiastical Censures. These are Penance, Excommunication, Suspension ab officio, beneficio or ab Ingressu Ecclesiae, Deprivation of Benefice, and Degradation or Deprivation of Orders (s). These are your own Words, Sir; and you assure the World, that the University-Court has had no Power to inflict such Censures since the Reformation (t).

You accuse your Antagonist of *endeavouring to degrade our noble Chancellor into a little paltry OFFICIAL*; tho' he had the Authority of the eminent Lawyer, whose Opinion he published for the Use of the Word (u): You accuse him likewise of *endeavouring to divest our Chancellor of the Authority essential to his Station* (x), because he produced an Opinion, to shew, that Appeals lay from him to the University: What Apology then will you be able to make to our Chan-

(r) This Power of visiting by Ecclesiastical Commissions was founded on Stat. 26 Hen. viii. c. 1. and Stat. 1 Eliz. c. 1. and was taken from the Crown by Stat. 16 Ch. i. c. 11. and by the Statute declaring the Rights and Liberties of the Subject, 1 W. and M. Sess. 2. (s) Furth. Inq. p. 17. (t) Ibid. (u) Opin. p. 22. note. (x) Furth. Inqu. 63, 64.

cellor for endeavouring to divest him of a very extensive Ecclesiastical Jurisdiction ESSENTIAL TO HIS OFFICE; as the following Instances of *Penance*, *Excommunication*, &c. clearly demonstrate.

Acta habita secundo die Mensis Novembris Anno Dom. 1564, coram venerabili viro Magistro Edwardo Hawford Procan. Acad. Cantab. in Camerâ suâ judicialiter sedente in praesentia Joh. Hammond Notarii Publici et Legum Baccalaurei, &c.

Quibus die et loco comparuit Hen. Searle Villae Cantab. Aldermannus, qui publice difamatus ob Incontinentiam cum famula sua, et praeconizatus ut compareret coram Dom. Procan. qui cum non comparuerit, diutius expectatus, ob insignem Contumaciam suam excommunicatus fuit; qui quidem Searle cum diu excommunicatus stetisset, et Breve quodam de Excommunicato capiendo (y) reformatans, tandem ad meliora reversus, humiliter a dicto Dom. Procan. petuit Beneficium Absolutionis sibi impendi. Et inde solutis prius per eundum Contumaciae

(y) The Chancellor was empowered to certify his Excommunication to the Ld. Chancellor of England, and to have a Writ de Excommunicato capiendo, by Grant from R. ii. See Hare, vol. i. fol. 218. b. Ex Rotulo patentium de Ann. 6 Ric. ii. parte 2. membro 2. In Tarr. Londin.

suae expensis; et praestito Juramento corporali de parendo mandato Ecclesiae, Dom. Procan. ad ejus submissam Petitionem eundem *absolvit, et Christianorum communicationi ac Sacramentis Ecclesiae restituit* (z).

Anno 1565. Rob. Spachman Barber, for having two Wives, was enjoined to sit in a Sheet on the Market-Hill, and in the Parish where he was married. Dr. Stokys Procan. (a).

Churchwardens detected and presented—*Hullocke*, for not repairing to his Church; and *John Dennis*; for not receiving the Sacrament: They were both censured by the Vicechancellor; and *Hullocke* being privileged, for saying, the Vicechancellor was not his competent Judge in this Cause, was imprisoned by Dr. Whitgift Vicechancellor (b).

King James the First, by Charter, given in the second Year of his Reign, confirmed the spiritual as well as the temporal Jurisdiction of the University; *Jurisdictionis tam spirituales quam temporales.*

22 Jan. 1609.—Amys, M. A. for using in his Sermon at St. Mary's this Expression,

(z) Acta Curiae.

(a) See Tabor's Book, fol. 413. ex lib. Utinam Matt. Stokys.

(b) Tabor. ibid. The Further Inquirer, p. 17. note f, informs his Readers, that "A. D. 1594, Archbishop Whitgift was "empowered, by a Commission from the Queen under the
that

*that one might as well abuse the Word or Sacraments or Oaths as play at Cards, was suspended by the Vicechancellor *cum affensu assident.* ab Executione muneric Ecclesiastici, et ab omni Gradu suscepso et fuscipiendo (c).*

13 July, 1613. *Hall sen. and Hall jun.* were suspended *ab ingressu Ecclesiae*, donec per dominum absolverentur; for giving a Person railing Language, and offering to thrust him out of the Church (d).

Acta Curiae 17 Mart. Ann. 1615. coram Dr. Gwyn, Procan.

Officium Domini Allegatur, That he hath
merum v. Joh. Scott, Fam. Scho- fought and quarelled and braw-
lar. ed by Words — quarelled and
brawled and cuffed with his Fists in Great
St. Mary's Church-yard, with one Gabriel

" Great Seal, to make a diligent and particular Survey of all
" and singular Courts ecclesiastical within his Province, as
" well in Places exempt, or which claimed any peculiar Ju-
" risdiction whatsoever, as in Places not exempt. No Man
" understood the Nature of our Jurisdiction better than the Arch-
" bishop, or was less apt to make ab-tements in the Extent of
" his own. He should be glad to know therefore, what other
" Reason can be given, why no Survey was then made of the
" Courts held in the University, than that they *were not ec-*
" *clesiastical.*" That this was not the Reason, is evident from
the Acts of this Bishop when he was Vicechancellor of Cam-
bridge: Ahd I will give the Inquirer another Reason, when
he has informed me, why the Archbishop visited no other
Ecclesiastical Courts throughout this whole Province, than
those in the Diocese of London. See Strype's Annals of Arch-
bishop Whitgift, B. iv. c. 12.

(c) Acta Curiae. (d) Acta Curiae.

Harrison in praesentia praefat. Scott, fatentis allegat. praeh. esse vera. Inde Dom. Sententiam in hac causa ferendo *Decrevit* dict. Scott *incidisse in poenam Excommunicationis* mentionat. in Statuto in ea parte edit. Ann. 5 *Edw. VI.* cap. 4. et sic *denunciand. fore decrevit in Ecclesia Parochiali Beatae Mariae Majoris.*

Officium Dom. merum v. Gab. Harrison Fam. Scholar. Allegatur ut supra v. Joh. Scott, et similiter actum et decretum per omnia, mutatis mutandis.

25 Mart. 1616. Comparuit dictus Harrison, quem Dom. ad ejus humilem petitionem absolvit a Sententia Excommunicationis.

17 May 1637. W. Ward M. A. of St. John's College was cited into the Vice-chancellor's Court, upon common Fame, for having gotten a bastard Child; and was enjoined *canonical Purgation*, by his own Oath, and the Oaths of Compurgators (e).

I doubt you begin to be tired with reading so many Instances of Ecclesiastical Censures; I will therefore relieve your Mind with a curious Instance of Ecclesiastical Indulgence.

A Vicechancellor's License to eat Flesh in Lent.

Edwardus Rainbowe sacrae Theologiae Professor et almae Universitatis Cantab.

(e) Acta Curiae. See Stat. 13 Ch. ii. c. 12. § 4.

Pro-

Procancellarius, Dilecto nobis in Christo
 Josepho Beaumont sacrae Theologiae
 Professori in Universitate praedicta, Sa-
 lute in Domino. Cum Leges ad Utili-
 tatem omnium conditae propter singulo-
 rum salute in de rigore suo aliquid remit-
 tere ipsae cupiant, Nos ex fide dignorum
 Testimonio intelligentes Piscium esum
 sanitati corporis tui nocivam fore, Salu-
 tem tuam ex Animo exoptantes, permit-
 timus et indulgemus Tibi, ac tribus qui-
 busvis aliis ad Mensam tuam invitandis,
 tempore quadragesimali jam currente
 Carnes edendi facultatem. Proviso,
 quod summam sex Solidorum et octo
 Denariorum in Parochia infra quam ha-
 bitas ad Cistam pauperum conferes, juxta
 Statutum hujus Regni Angliae in ea parte
 editum et provisum. Volumus etiam
 quod omnia et singula alia perimblebis et
 (L. S.) observabis quae in dicto Statuto conti-
 Edw.
 Rain- nentur. In cuius Rei Testimonium Si-
 bowe gillum Officii nostri praesentibus apponi
 Procan fecimus. Dat. Cantab. quinto Die Men-
 sis Martii, Anno Domini juxta Computa-
 tionem Ecclesiae Anglicanae Millesimo
 sexcentesimo sexagesimo secundo (f).

(f) The original License is now in the Possession of Dr. Macro of Norton in Suffolk. See Oughton, Ordo Jurid. vol. ii. p. 24.

And three times in every Year, namely at the Conclusion of every Term, does the Vicechancellor pronounce a general Absolution in the following Words :

Auctoritate Nobis commissa, Nos absolvimus Vos ab omni levi Negligentia, Forisfactione seu Transgressione Statutorum, Privilegiorum, et Consuetudinum ; et Deo et Sacramentis Ecclesiae Vos restituimus. In nomine Patris, Filii, et Spiritus sancti. Amen.

I own, I was scandalized both at your Adversary and you, for treating this approved Custom with Irreverence (g). And if it be not contrary to true Religion, I would have it preserved as a perpetual Monument of Ecclesiastical Jurisdiction in the University of Cambridge. And I am the more desirous of this, because the Rulers of the University are sometimes apt to forget its Jurisdiction. When our late Orders and Regulations were published to the World, it was Matter of Wonder to the serious Part of it, to read one against going to Houses of evil Fame, or being in Company with Women of notoriously bad Characters ; for they wondered that the University had never found such a Law necessary before, or that they should find it particularly necessary at that Time. Nor could

(g) Opinion, p. 24. Furth Inqu. p. 37. note k.

I then

I then give a Reason why there was no express Statute of the University, either *old* or *new*, against Crimes of that Nature, tho' I believed that every private College had one. But now the Reason is evident: All Crimes of that Nature were cognizable by the Vice-chancellor as an *Ecclesiastical Judge*; and punishable by the *Canon Law*.

I have taken for granted, you see, that there is no Statute of the University against Crimes of Incontinence, and am persuaded, that there is none. If I am mistaken, I shall readily submit to your Correction; and take Shame to my Folly. For no Man can be more sensible of the ridiculous Light in which a Philosopher must appear, when he undertakes to account for a false Fact.

Before you gave Reasons, therefore, *why* Ecclesiastical Censures *could not* be inflicted in University-Courts since the Reformation; you should have been well assured, that they *were not* inflicted. But tho' you are a great Canonist and a great Civilian, you may not be very conversant in the municipal Laws of your Country. You triumph too much over your Adversary, when you tell him, that "the Chancellor of the University was " always an ecclesiastical Person before the

“ Reformation, but was a *Layman* when
 “ the Royal Statutes were given, and has
 “ been so ever since ; and therefore he could
 “ not inflict ecclesiastical Censures, for Want
 “ of the requisite *clerical Function* (b).” For
 by Stat. 37 Hen. VIII. c. 17. it is enacted,
that any Chancellor, Vicargeneral, Commis-
sary, Official, Scribe, or Register, may law-
fully execute and exercise all Manner of Ju-
risdiction, commonly called Ecclesiastical Ju-
risdiction, and all Censures and Coercions ap-
pertaining or in any wise belonging unto the
same, albeit such Person or Persons be Lay,
married or unmarried, so that they be Doc-
tors of the Civil Law; any Law, Constitu-
tion, or Ordinance to the Contrary notwith-
standing. And tho’ this Act was repealed
 in the Popish Reign of *Philip and Mary*, it
 was revived in the first Year of Q. *Eliz.*
¹ *Eliz.* c. i. s. 12. Accordingly,
 it is the constant Practice of our Ecclesiastical
 Courts, for a Lay Judge to decree Sen-
 tence of Excommunication, which a Priest
 denounces in the Church (i).

(b) Furth. Inqu. p. 20.

(i) Oughton. de Excom. tit. 38.—tunc leget [Judex] *Schedulam Excommunicationis praedictam, vel (si Judex non* sit in *sacris Ordinibus constitutus) illam legendam Presbytero* tradet : *Sententiam Excommunicationis, in scriptis latam, se-*

The Method of your Book obligeth me to go backwards, to what you have talked about *Chancellors, Officials, Constituents, Ordinaries, and Ordinary Jurisdiction* (k) : Which is the same Sort of Talk with which you entertained the World in your first *Inquiry*, about *Inferior* and *Superior*, about the Absurdity of Appeals lying from a *Bishop* to his *Clergy*, from a *Mayor* to the *Corporation*; from a *Master* to the *Fellows of a College*. A few Words will put the Meaning of what you have spread over a great Number of Pages, in a clear and strong Light. Thus then your Argument may be stated, without that vast Profusion of Learning which you have squandered away upon it. *A Chancellor or Bishop's Official, bath the same Court with the Bishop, so that the legal Acts of the Court are the Bishop's Acts, by whose Authority he fits there: A Vicechancellor, or University's Official, bath the same Court with the University, so that the legal Acts of his Court are the Acts of the University, by whose Authority he fits there: As there is no*

quitur *Denuntiatio*, (in Ecclesia Parochiali excommunicati. vel alia quacunque Ecclesia infra Jurisdictionem citantis) quae fit ex *Judicis mandato*, et sub ejus Sigillo emanat.

(k) Furth. Inqu. p. 11—17.

Appeal from a Chancellor, or Bishop's Official, to the Bishop; so there is no Appeal from a Vicechancellor, or University's Official, to the University; because they have unum et idem Auditorium; and such Appeals would be from the same Judge to the same again, which is absurd. I think I have done your Argument Justice. But refined Argumentations, how much soever I might otherwise be disposed to admire their Subtlety, weigh little with me against plain and obvious Matters of Fact. Did not Appeals lie from the University acting by their Delegates to the same University again, which surely had *unum et idem Auditorium*, before they were restrained by an express Statute, in these Words, *nec secunda Provocatio omnino admittatur* (1)? Had not the Chancellor and the University *unum et idem Auditorium* in the Days of *Hugo Balsam*, when they had no civil Jurisdiction? Have not the Vicechancellor and the University *unum et idem Auditorium* in civil Causes at this Day? And did not Appeals always lie from the Chancellor or Vicechancellor to the University *in some Causes* at least? Why then may they not, without Absurdity, *equally lie in all Causes*?

(1) *Stat. de Causis forensibus.*

The Truth of the Case is, that Appeals do equally lie in all Causes; for in all Causes they rest upon the same Foundation, the general customary Laws of the University, the *canon and civil Laws.* And so Mr. Attorney General in his Argument for the University against Dr. Bentley; *the Proceeding in the Vicechancellor's Court is according to the canon and civil Laws;* — *an Appeal lay from the Vicechancellor's Court to the Congregation;* and this depended on a positive Law, which was made such by confirming the Privileges of the University (*m*); not, Sir, as you fondly imagine, on *a positive Statute of the University* (*n*), but on *a positive Statute-Law of the Realm*, an Act of Parliament, (13 Eliz.) which confirmed the Privileges of the University.

I have been obliged to repeat the Words *canon and civil Laws* so frequently, that my Ears are almost offended at the Sound. But as your Ears are not over delicate, and as you sometimes seem rather unwilling to understand what is said to you, I shall beg Leave to repeat them once more. For I come now

(*m*) *Raymond's Reports.* Dr. Bentley's Case.

(*n*) *Further Inqu.* p. 13. note, and p. 48.

to consider your Observations on the Opinion of an eminent Lawyer.

- It is a Truth, which, I hope, will never be controverted hereafter, that Appeals lie from the Vicechancellor to the University, in all Cases where the *canon and civil Laws* allow them: Or in other Words, in all Cases excepting where they are expressly restrained.

And this Truth, Sir, the Person who stated the Case, and the eminent Lawyer who gave his Opinion upon it, knew very well. Accordingly the *Quære* is,

“ Whether Appeals to Delegates by the
“ Statutes de Causis forensibus are restrained
“ to civil Causes in which two Parties are
“ litigant ?

Answer. “ The Statute de Causis forensibus is penned in such general Terms, that,
“ I think, the Appeal to Delegates thereby
“ allowed CANNOT BE RESTRAINED to civil
“ Causes only wherein two Parties are litigant, but doth extend to Causes of Correction and Censure.

You say, Sir, that “ no Man can have a
“ higher Veneration for the Person, or a greater
“ Deference to the Judgment of that truly illustrious Personage, whose Opinion,
“ when Attorney General, is here cited, than
“ yourself:

“ yourself : Nor can it be imputed to any
 “ Want of either, that you have presumed to
 “ point out the Omission of some necessary
 “ Explanations in the State of the Case only,
 “ upon which it was given. If any Apology
 “ was due, it can only be so to that very ex-
 “ cellent Person, by whom the Case itself is
 “ supposed to have been drawn ; and it seems
 “ scarce necessary even to him, whose known
 “ Candor will not permit you to suppose,
 “ that he would take offence at an Attempt
 “ to explain a Particular or two, the Explana-
 “ tion of which he happened to omit (o).”

What impression these fine Compliments might make on the great Men for whom they are designed, I will not take upon me to conjecture : But of this I am very certain, that your Criticisms on what they have written, are far from being agreeable to your Professions of Veneration for their Persons and Judgments.

You inform this eminent Lawyer and his Client, that, *in the State of the Case, there were two leading points* ; the Commis-
sary's Patent, and the Entry in Mr. Tabor's

(o) Furth. Inqu. p. 41.

Book ; both of which ought, and yet neither of them seem, to have been fully explained.

Why, Sir, both these leading Points were, and you know that they were, fully explained. But as your Memory of Facts is a little slippery, you will thank me for refreshing it.

You may recollect, that the eminent Lawyer did send to Cambridge, not only for a Copy of the Commissary's Patent, but also for the Practice of the Commissary's Court : And his faithful Client transmitted to him a Copy of one, and an Account of the other. " I have looked over, says he, several of the " Acts of the Commissary's Court, in Q. Eli- " zabeth's Reign, after the Statute *de Caufis forensibus* was given, Ann. 1570, and find " no one Cause of Correction and Censure. " I am told, there is none to be found till " about the Year 1726, when, I remem- " ber, the present Commissary began to hold " Plea in these Causes. He burnt several " Bushels as under the Standard Size, and " suppressed a Billiard-Table (g).~ This pass- " ed quietly, and gave no Offence. Soon

(g) There are Gentlemen in the University at this Day, who remember that the Commissary cited several young Scholars into his Court, and inflicted a pecuniary Mulct on them for resorting to the Billiard-Table.

" after he cited into his Court a Vintner, and
 " levied a Penalty. This raised a great
 " Flame, as done by a Power usurped by the
 " Commissary, and not known to his Prede-
 " cessors. On which the Commissary re-
 " solved never to meddle more with these
 " Causes. Tho' he has no President in the
 " Acts of his Court, yet he thinks he has a
 " Right to hold Pleas in these Causes, which
 " he finds on his Patent here transcribed.
 " Tho' the Patent runs in such general Terms,
 " I know he does not pretend to hold Pleas
 " in any Cause where a Master of Arts is one
 " of the Parties, as being contrary to the Sta-
 " tute of Q. Elizabeth, *de Caufis forensibus*.
 " There is no Instance of an Appeal from the
 " Commissary, but in Causes between two
 " Parties."

And yet after this full Explanation, the Attorney General could make use of the Commissary's Patent, as a collateral Evidence; to shew that Appeals lay from the Vicechancellor to the University in Causes of Correction and Discipline. "I think so *the rather*, says he, because the Appeal from the Commissary to the Vicechancellor is given in the same Clause, and in the same Manner, with the Appeal from the Vicechancellor

" to

“ to Delegates ; and the Words of the Commissary’s Patent extend as well to Causes of Correction and Censure, as to civil Causes.
 “ Now there can be no Doubt, but that an Appeal lies from the Commissary to the Vicechancellor in all Cases.”

But, for the Sake of displaying your perfect Knowledge of the ancient State of the University, you assert, that *the Commissary’s Patent has run in the same Terms since the Royal Statutes were given, as before (r).* This Fact you should have proved. And when you had proved the Fact, you should have shewed that it was any thing to the Purpose. You give a strong Reason, however, why *it should not run in the same Terms since the Royal Statutes were given, as before;* because one Part of his Jurisdiction was really taken away by the Statute de Causis forensibus ; civil Causes, and no others, being rendered cognizable by the Commissary(s). What ! tho’ that Statute makes no Distinction of Causes ! tho’ it begins, *Omnes Causae et Lites quae ad Universitatis Notionem pertinent, tam Procancellarii quam Commissarii*

(r) Furth. Inqu. p. 37.

(s) Ibid.

sarii Judicio subjiciantur! tho' the Attorney General had declared, that "the Statute *de Causis forensibus* is penned in such general Terms, that it *cannot be restrained* to civil Causes only, but doth extend to Causes of Correction and Censure."

The other *leading Point*, which, you say, was not fully explained, is the Entry in Mr. Tabor's Book. "Chark, Fellow of Peterhouse, Anno 1572, was expelled the University and his own College, for erroneous Doctrine in a Clerum at St. Mary's, by the Vicechancellor and Heads. From this Sentence Chark appealed by the Word *Appello* only. By which the Vicechancellor judged no Appeal to be made amongst other Reasons, because it was adjudged in a like Case, *Appellacioni non esse deferrendum*, as often as the Sentence is given by the Vicechancellor with the Assent of his Fellow Judges, that is, the major Part of the Heads of Colleges.

"An Extract out of Tabor's Register, p: 530. No Appeal from the Sentence of the Vicechancellor *in Negotiis Correctionum*, quoties Sententia feratur per Dom. Proancellarium cum Consensu majoris Partis Praefectorum Collegorum.

"Sed

“ Sed Tu cave ne ad alias Causas hoc De-
 “ cretum pertinere affirmes, quam ad eas so-
 “ las quae in Statutis ad Judicium Procancell-
 “ larii et majoris Partis Praefectorum Colle-
 “ giorum pertinent.”

“ *Tabor* was Register of the University in
 “ the Beginning of the Reign of King *James*
 “ the First.”

This Accornt of *Chark*, the Extract out of *Tabor's* Book, and the Memorandum of the Time when *Tabor* was Register of the University, I have here transcribed Word for Word from the very State of the Case with which you make so free.

And what Occasion was there to tell the Attorney General, that *Chark* was expelled upon the particular Statute *de Concionibus*? What Occasion was there for the melancholy Story of *this Chark and such another Wretch as himself, and the Widow of the learned and judicious Hooker*? which are all the Improvements you have been pleased to make. And had not Mr. Attorney General some Reason for observing, not only *at first Sight*, but at a second and a third Sight, that “ the Entry in Mr. *Tabor's* Register imports, that even in “ Causes of Correction, an Appeal lies from “ the Sentence of the Vicechancellor, when “ he doth not act jointly with the major
 “ Part

" Part of the Heads of Houses ? "

But the unhappy Client, it seems, had omitted a third *leading Point*. *He had neither in the first, nor in any other Quære, taken the least Notice of the Words of the 42d Statute, upon which the Vicechancellor's Jurisdiction in Matters of Discipline is entirely founded (t).* But you know, Sir, that he laid the 42d Statute itself before his Lawyer; and you know, that he did not forget the privileged Words *Judicio suo*: Out of which, tho' the dull Editor of the Opinion could not by any Art of Construction pick a final Determination; yet you will presently shew us, that no less than one hundred and sixty-four Regent and Non-regent Masters picked that very Sense out of them (u).

But before we enter the List in the Middle of this armed Host, let us agree upon one Point, in your own Terms. *I readily agree with you, that if the same State of the Case, which some Years ago was laid before the greatest Lawyer of this or any other Age, or, if almost any other State of the Case than what your honest Quærist drew up, had been been laid before Mr. W—— and Mr. N——,*

(t) Furth. Inqu. p. 40.

(u) Ibid p. 24. note.

their Answers probably would not have been greatly different from that of the eminent Lawyer, whose Opinion has been quoted (x).

Opinions made up of such ill-tempered Materials as your honest Quærist had provided, must prove vain and futile, when brought to the Test of a well-informed Judgment. You seem at last to be wofully sensible of this yourself. You fought with these Weapons in your Hand, for some Time, indeed, with tolerable Success, against half-armed, straggling, vulgar Soldiers ; but when you tried your Force against the immortal Shield of the eminent Lawyer, they shivered into a thousand Pieces.

— *Postquam arma Dei ad Vulcania ventum est,
Diffiluit : fulva resplendent fragmina arenâ.
Ergo amens diversa fugâ petit aequora TURNUS,
Et nunc huc, inde huc incertos implicat Orbes.*

Had not Despair of Success, in opposing the Opinions of Mr. W— and Mr. N—, against the Opinion of an eminent Lawyer terrified your Senses, you would not have fled for Protection into the Camp of your Enemies. Had you not mistaken the *one hundred and sixty-four Regent and Non-regent Masters*

(x) Furth. Inqu. p. 36.

for your Allies, you would not have accosted them with such civil Language. "They," and "I believe every body will readily agree with "you, cannot but be supposed to have been "well acquainted with the Constitution of "the University, as well upon the Footing "of the old Statutes, as of those of the Queen; "and therefore you recommend (what they "say) to the Reader's attentive Considera- "tion (y)."

But it is high Time to undeceive you. Those Gentlemen are good Friends to Liberty and Appeals.

It may not be amiss to premise a few Words which immediately precede the Objection you have produced. The Masters of Arts complain of the new and excessive Power, granted to the Vicechancellor and Masters of Colleges, by the Queen's Statutes.

"The Insolence of this Authority, they "say, hath caused some Masters [of Col- "leges] to revile Regents, both in the Regent- "House and other open Meetings, termynge "them Merchautes and seditiouse, with "other opprobrious Names ; threaten-

(y) Furth. Inq. p. 45. See MS. in C. C. C. Library : containing the *Objections of 164 M. A. to Q. Eliz.'s Statutes, and the Answvers of the Heads of Colleges.*

“ ing if they misliked their new Statutes,
 “ they should have worse. Whereas the olde
 “ Statutes do so much attribute to the
 “ Credite of Regents and Nonregents, that
 “ such an Injurie shewed to one of them in
 “ the Presence of the Vicechancellor, and
 “ not redressed severlie by him, should, by the
 “ Proctor’s calling a Congregation in despite
 “ of the Vicechancellor and appointing De-
 “ legates, be redressed.”

Objection. “ And whereas the olde Sta-
 “ tutes give that Privilege, Ut si Magistri re-
 “ gentes vel aliquis eorum contra Procancel-
 “ larium colluctentur, eorum Causa per De-
 “ legatos ab Academia terminetur, et, ut om-
 “ nis timor subornationis absit, tam Procan-
 “ cellarius quam taliter rebellans discedat (b).
 “ And the Queen’s Injunctions do restrayne
 “ the Vicechancellor from committing any
 “ Gremials to Prison without the Consent
 “ of the greatest Part of Masters of Colleges;
 “ the new Statutes give the Vicechancellor
 “ absolute Authority to sende Masters of Arts
 “ to Prison at his Pleasure. And therefore
 “ the first Word now commonlie is, To the
 “ Tolbote with him, as by diverse Examples
 “ is to be proved.

(b) Stat. vet. de Rebellantibus Cancellario.

Answer.

Answer. " That Statute, which giveth the
 " Chancellor Authority to commit any of
 " them to Prison [is] upon just Cause ; espe-
 " cially in this licentious Time, in the which
 " they do delight and glory in breaking the
 " godly Laws and good Orders."

The Objection consists of two Parts. The first Part, which refers to the first Statute *de Rebellantibus Cancellario*, I shall explain in your own Words, because the Explanation is just. " A Regent, on the Footing of this Statute, cannot be tried at all by the Chancellor : " The Cognizance of his Offence, and that *in the first Instance*, is expressly given to other Judges, Regents probably, and to be chosen by Regents (c). The second Part of the Objection manifestly confirms your Adversary's Explication of the Words *Judicio suo* (d). It compares the Authority given to the Vicechancellor, in the Queen's first Collection of Statutes, with the Authority given to him in her new Statutes, against which all the Objections were raised. For in that first Collection the Queen enjoins, that the Vice-chancellor shall not commit any Gremials to Prison, *without the Consent of the greatest*

(c) Inquiry, p. 15.

(d) Opinion, p. 18.

Part of the Masters of Colleges. But the new Statutes have greatly inlarged his Power ; These give him Authority to send Masters of Arts to Prison *absolutely* ; by his sole Judgment ; without the Consent of the greatest Part of Masters of Colleges : And at his Pleasure, at his own Discretion ; suspensione Graduum, Carcere, aut alio leviore Suppicio Judicio suo castigare (e).

But if it be posible, that any Doubt can yet remain, about the Meaning of the Words *Judicio suo* ; the Passage I am going to produce from the same Manuscript, will shew plainly, that these Objectors did *not* suppose them to imply a *final Determination*. Not only they, but the Masters of Colleges too, who compiled and defended the Queen's Statutes, expressly allow, that an Appeal lay from the Vicechancellor to the University, when he inflicted a Sentence of Imprisonment without or with the Consent of a Majority of Heads.

For I cannot disband this loyal Company of one hundred and sixty-four Regent and Non-regent Masters, whom you, by glozing Speeches, have traiterously attempted to se-

(e) Stat. Eliz. cap. 42. De Cancellarii Officio.

duce from their Allegiance ; before they have given you one parting Salute.

After some fresh Complaints against the tyrannical Acts of the Vicechancellor and Heads, whom the Queen had put into a Commission of the Peace, they add,

“ And commonlie for Mayntenance of
“ their Extremities, they will say, they do not
“ *as Vicechancellor*, but *as Justices of the*
“ *Peace*; and thereby refuse Appellations to
“ *the Bodie*. So that we know not under
“ what Jurisdiction we live; and *Liberty of*
“ *Appellations* is wrested out of our Hands
“ by these Oppressions.”

Answer by the Heads.

“ It is very requisite and necessary, that the
“ Vicechancellor, and others of the Univer-
“ sitie, should have the Authority of *a Ju-*
“ *stice of Peace, to commit seditiouse and rebel-*
“ *lious Persons, and Breakers of the Peace,*
“ *unto Warde, without any Refuge or Pro-*
“ *tection of Appellations (f); or else Malefac-*
“ *tors would trust by these Appellations to pro-*

(f) As was just now seen, before these new Statutes were in force, the Vicechancellor could not, by virtue of his Office, commit any Gremials to Prison, without the Consent of the greatest Part of Masters of Colleges.

*"cure them some other Friends as would
"maynteine their Iniquitie, and deliver them
"from the Hand of Justice; to the defacing
"of the Magistrate, and the Trouble of all
"that be godlie."*

Reply to the foregoing Answer.

*"It was not the first Intent of the Graunt
"of Justices of Peace, to insult upon Masters
"of Arts doeing their Duty, upon foolish
"private Affections. Such Enormities as are
"here heaped up, [viz. Sedition, Rebellion,
"and breaking the Peace] are to be restrayn-
"ed by that Authority; but a Regent in
"the Regent-House to be commanded to the
"Tolbote for modestly asking a Question, or
a Disputer for modestly disputing, is an Heart-
fore to the whole Universitie."*

Is it not plain, from what I have here transcribed, that the Body of the University, who disliked the Queen's Statutes, and the Heads of Houses who compiled them, were so far from imagining that they restrained Appeals to civil Causes only where two Parties are litigant, that they all understood an Appeal to lie from the Vicechancellor to the University, even when he ordered any one to Prison by the Authority of his Office,

with

with or without the Consent of a greater Part of the Masters of Colleges?

The University of *Oxford* too seems to have been in Possession of the same Liberty of Appealing, from an Order of Imprisonment issued by their Vicechancellor, before their Statutes were new modelled, under the Influence and Disposition of Archbishop *Laud*. For whilst the Busines of reforming and altering their Statutes was in Agitation, King *Charles the First*, in order to suppress immediately the Disturbances which prevailed in *Oxford*, wrote a Letter to the University, injoining, amongst other Matters,

“ That as to any whom the Vicechancellor commands to Prison, the Message be sent by the Beadle ; and he that refuseth shall be judged a Breaker of the Peace, and not have any Appeal.”

In this same Letter likewise is “ A Command, that the Delegates, who at this present are in Hand with the Statutes, make haste and lay all other Statutes aside, till they have drawn up two perfect and sufficient for Causes of Appeal ; the one in Matters of Instances, and those things which belong to the Chancellor’s Court, the other for all Kinds of Appeals in other Causes

" Causes whatsoever. Dated *Woodstock,*
 " 26 August, 1631 (g)."

Accordingly in Archbishop *Laud's* Statutes for our Sister University, Appeals are *expressly prohibited* in many Cases (b). What those Cases are, you have seen in the Papers laid before the *eminent Lawyer*. I could not therefore forbear lifting up my Hands in Astonishment at your asserting so roundly, that *in all foreign Universities, and even in our Sister University of Oxford, no Appeal is admitted in Matters of Discipline* (i). As to foreign Universities I know nothing of their Laws or Constitution. In Roman Catholick Countries, I suppose, they have Appeals to the Pope, in all Cases. That they have no Appeals to their own Body, rests upon your bare Word : To which you have given me little Encouragement to resign an implicit Belief. As to our Sister University of *Oxford*, Appeals are there admitted in all Cases, excepting those in which they are expressly prohibited; and in the Language of the *Civilians*, which is the Lan-

(g) Paper Office Bundle. *Ecclesiastica Universitatis.*

(b) Statut. Ox. Tit. 21. § 16. *De Perturbatoribus Pacis,*
sive iis quorum Appellationes recipienda non sunt.

(i) *Further Inquiry*, p. 76.

guage of common Equity and common Sense, those Laws which restrain Appeals are termed *odiosæ*, and must be interpreted in the strictest Sense. But in our own University of *Cambridge*, there is *but one* Prohibition, and that is in the 48th Chapter, *De Causis forensibus*, which prohibits a second Appeal from Delegates to the University in the same Cause; *nec secunda Provo- catio omnino admittatur* (k). And therefore they are to be admitted in *every other Case*.

Although the Question thus fully, and I hope, decisively cleared up, be not a Question of *Utility*, but of *Right*, let me ask you, whether Discipline has been better supported in the University of *Oxford*, where the Liberty of appealing is in some Causes restrained, than in the University of *Cam-*

(k) In the Charter 2 Jac. I. before cited, in which he appoints the Vicechancellor Visitor over those Colleges, which have no special Visitor appointed by their local Statutes, and orders that an Appeal shall lye from the Vice Chancellor to the University, there is the like Prohibition of a second Appeal. Volumus tamen, quod ad dictum Cetum Regentium et non Regentium, unica tantum Appellatio admittatur, tam in Causa prædicta Visitationis, quam in alia quæcunque quæ ad dictum Cetum appellatur, et ut Delegatorum prima electorum Sententia finalis (infra terminum legitimulata) rotoris habeat firmitatem, nec per alios Delegatos *vel* *Judicem quemcunque revocetur vel aliquo modo enervetur.*

bridge, where it is absolutely free ! for absolutely free it is by our Constitution, and has been freely exercised till within these last two Years. I ask not this Question, with a Design of casting the least Reflection on that famous Seat of Learning ; but to shew, what such Politicians as you cannot discover, or will not own, that this Liberty is no Clog in the Wheels of academical Government. Wise Men, were they to apply the Metaphor, would call it the Oil, which preserves, and facilitates the Motions of the whole Machine.

I have now done with your Cavils at *the Opinion of an eminent Lawyer*. I shall conclude with an Apology, for the Assertors of Appeals, whom you have most unworthily traduced ; and for the Measures they have taken to secure the Right to themselves, and to deliver it down inviolate to Posterity, to which you have most weakly objected.

If it be the peculiar Glory of *Englishmen*, to be ever watchful and jealous of any Incroachment on their Liberties ; if the Spirit, with which the two Universities opposed the arbitrary Power of King *James* the Second, did them real Honor ; if the Principles of the Revolution, and the Means employed to preserve

preserve the Protestant Succession, were true Principles, and justifiable Means; and if it be right to vindicate these Means, and to teach these Principles to the Youth we educate; no Reproaches ought surely to be cast on the University of *Cambridge*, for their being alarmed at a late Attempt made by a few Persons of their own Body, to deprive them of their Liberties; no Reproaches ought to be cast on those *Fifty Masters of Arts*, who collected themselves together, and entered into Engagements to maintain their Liberties, by all Means which were consistent with the Respect due to their Chancellor, their own local Statutes, and the Laws of the Land.

These were the Principles, and these the avowed Designs, of those Gentlemen who composed the Association. Are these Principles Tory Principles? Or are these, the Designs of Men disaffected to the Government? No Man but you, Sir, would have ventured, at this Time of Day, to insinuate so ridiculous a Calumny (*l*). Nor should I, who am well acquainted with those Gentlemen, who value myself upon being one of their Number, have condescended to take the least No-

(*l*) Further Inqu. p. 3. Note, and p. 80.

tice

tice of this worn-out Trick of your's, had not your Book been thrust into the Hands of some great Patrons of Learning, who live out of the Knowledge of our real Characters; and who might be rendered less favorable to our Cause, by the Suspicions which your malicious Craft would inject into their Minds against the Defenders of it. To those who reside in the University, who daily see them, and freely converse with them, I would not say a Syllable in their Vindication. They have all taken the Oath of Allegiance to his Majesty King *George*. "They have all
 "sworn to pay a respectful Obedience to
 "the Chancellor and Vicechancellor of the
 "University of *Cambridge*, *Quatenus jus
 fasque est*: They have all sworn, to ob-
 "serve the Laws, Statutes, approved Cus-
 "toms, and Privileges of the University, to
 "the best of their Abilities; and to defend
 "it's State, Honor, and Dignity, with their
 "Votes and Counsels, asked and unasked,
 "as long as they live (*m*)."
 And you, Sir,
 have sworn to the same.

(*m*) *De Matriculatione, Stat. vet. Ann. 1544.*

Censum Procancellarius et duo Procuratores statis diebus agunto. Qui non expectare dies hos, sed ante censeri velit, Academiæ Scribam adito, et nomen suum et Tutoris, mensam-

So

So much for the political Characters and Obligations of the Affertors of Appeals. Let us now consider, whether their Conduct has been agreeable to their Duty and Professions.

It is now a Year and Half, since our Disputes first began ; and in all this Time, tho' they have acted with unwearied Vigor and Zeal for their Cause, tho' they have been oftentimes deluded, reviled, and threatened ; yet all By-standers and many of their principal Opposers, have applauded their Temper and Moderation : And I do defy the Bitterness of your inquisitorial Spirit to produce a single Act of the Associators, which is repugnant to any Law of God or Man. And, I hope, they will persevere with the same

que et convictum, in quo fuerit, proficitur, censusque nomine pecuniam præscriptam pendito, tunc in hæc Academiæ verba jurato :

“ Cancellario Procancellarioque Academiæ Cantabrigiensis,
 “ quatenus jus fasque est, et pro ordine in quo fuerim, quam-
 “ diu in hæc republica degam, comiter obtemperabo ; Leges,
 “ Statuta, Mores approbatos et Privilegia Cantabrigiensis
 “ Academiæ (quantum in me est) observabo : Pietatis, et bo-
 “ narum Literarum Progressum, et hujus Academiæ Statum,
 “ Honorem, Dignitatem tuebor quoad vivam, meoque Suf-
 “ fragio atque Consilio, rogatus et non rogatus defendam :
 “ ita me Deus adjuver, et sancta ejus Evangelia.”

Jurati nomen in Scholasticorum album Scriba reserto, et pro ordine in quo fuerit. Qui censeri recusat, et post perac-
 tum censum incensus manserit, eum Magister quicunque Col-
 legii fuerit, domo cui præst pellito.

Constancy

Constancy and Unanimity, until the Breach which has been made in their principal Fortification, the Right of Appealing, be repaired, and the Constitution of the University be renewed and settled on it's proper Foundation, the Canon and Civil Laws.

You may represent such Language as *childish Declamation against the dangerous Influence and Effect of arbitrary Power (n)*: You may call our Claim of Appeals, *a Cry of THE CHURCH or IT's Jurisdiction AT LEAST being in Danger (o)*: You may ridicule us as making a loud Uproar for a mere Trifle: But to my plain Apprehension, the Constitution of the University is of as much Consequence to the Members of the University, as the Constitution of the *English Church and State* is to the People of *England*; and they who have no Feeling for the Former, can have little Affection for the latter.

And what, after all, have these outragious Sons of Violence committed (*p*): Why! In the Beginning of last Spring, they in a decent statutable Manner, proposed a Grace

(n) Further Inqu. p. 82.

(o) Further Inqu. p. 3.

(p) Further Inqu. p. 62.

to the Congregation, by which their Disputes might be decided : And, at the civil Request of the Vicechancellor, chearfully withdrew their Grace, till our Chancellor could be consulted. As soon as it was made known, that our Chancellor did not choose to give his Sentiments upon the Grace, they thought themselves at Liberty to propose it again. But it being observed, that, as Mr. A. was applying to *Westminster Hall*, where some Light might be thrown upon the Subject, it would be proper to wait the Issue of his Trial, they acquiesced with great Patience until last *October*, when there was no doubt, but that Mr. A. had dropped his Suit. Their Expectations being then raised by a Rumour of a Grace coming from the Vice-chancellor, they waited in daily Hopes of Terms of Accommodation, untill his Magistracy expired. Soon after the present Vice-chancellor came into Office, they put their Grace into his Hands , and, because he would not suffer it to be read to the Senate, they expressed their Resentment, by stopping a Grace or two themselves ; which is the only Method the Body has of declaring their Dislike of any Measures taken by their chief Magistrate.

trate. The Transactions of that Day, and a few following, roused the Spirits of the whole University. A large Number of Masters of Arts, who met upon the Occasion in the public Library, deputed two Gentlemen to lay their Grievances before the Vice-chancellor, at his own Lodge. This produced a Sort of Negotiation, which was carried on by several Conferences, during the *Christmas* Holidays, with Propriety of Manners and good Temper on both Sides. At length the Vicechancellor called a Consultation of his Brethren, the Heads of Colleges, to give a final Answer to the Claims of the Body. The Answer returned by the Vice-chancellor and Seven Heads was, as well as I can remember, for it was delivered publickly and cautiously, in these Words ; “ It was “ their Opinion, That no Appeal lay from “ the Vicechancellor to the University, for “ any Censure or Punishment inflicted for “ Breach of Statute : ” It was their Opinion also, “ That the Disputes about the Right “ of Appealing, could not be determined by “ a Grace of the House.”

To the first Opinion of the Vicechancellor and seven Heads, I shall make no Scruple

ple to oppose the Opinion of the eminent Lawyer, who has declared, that such an Appeal does lie. Their second Opinion, that we cannot determine our Disputes by a Grace of the House, is founded, I presume, on an Argument in your Book; that such a Grace would alter the Constitution of the University, and CREATE Rights, not only unknown to the Statutes, but contrary to and inconsistent with them. For the last Clause of the 42d Stat. expressly prohibits all such Alterations or Innovations (q). The Words of this Clause are, "Eidem Cancellario cum consensu totius Academiae licebit nova Statuta, ad Eruditionis amplificationem, et decori atque honesti conservationem inter Scolasticos habendam, sancire, sic ut ea his Decretis nostris nihil detrahant aut officiant." Now, if the Opinion of the eminent Lawyer be true, that a Right of appealing from the Vicechancellor to the University, in Causes of Correction, be agreeable to Queen Elizabeth's Statutes, we cannot, consistently with her Statutes, restrain or take away this Right, but we can confirm and establish it by a Grace of the House.

(q) Further Inqu. p. 61.

And if we wanted a Precedent to countenance such a Law, you have furnished us with a very apt one, *settling and ascertaining*, to use your own Words, *a Right, which by many People will be thought of at least as much Consequence, as this Right of Appeal*: namely, *the Right of Election in all Cases, that of our Representatives in Parliament not excepted* (r). The Preamble to this Grace differs not much from the Preamble to our's.

“ Cum ortae saepius, ob controversum suffra-
 “ giorum jus, officiae litesque gravissimae
 “ certius aliquid de iis statui postulare vide-
 “ antur; placeat vobis, &c.” It passed the University Senate in the Year 1698; and in a Cause betwixt *Whitstones* and *Bacon*, about the Election of a Vintner, which came before the King in Council in the Year 1728, was judged to be *very just and reasonable, good and valid*.

Having so much Reason and Authority on our Side; all Hopes of peaceable Accommodation cut off; our Liberties, Properties, and Reputations declared subject to the uncontroulable Will of one Man; persuaded that no Power less than the *British* Parliament could fix our Rights, excepting a Law

(r) Inquiry, p. 45.

of our own Senate ; what could we do but try the Fate of our Grace again ? It was offered again to the Vicechancellor, and rejected, without the Ceremony of calling a *Caput* to consider it. Passive Obedience is not a Tenet of the Assertors of Appeals. They had rather undergo Suspension, temporary or perpetual Banishment, the severest Punishments which the Vicechancellor and Heads can inflict, than tamely yield to arbitrary Dominion. Upon this Principle they resolved to obstruct all Business in Congregation, until their Grace was submitted to the Judgment of the Congregation, or some other Step was taken, likely to ascertain our Rights and Privileges. And this is the present State of the University of *Cambridge*. Who are to blame, let others judge.

*Deus haec fortasse benignā
Reducet in sedem vice.* Hor.

The Grace in question, proposes to the Senate, that " Since very great Discords have frequently arisen of late in our University, concerning Matters of Appeals ; that all such Discords may cease for the future; May it please you, to *confirm* by your Authority, that every Member of the Uni-

" versity hath a Right of Appealing from
 " the Vicechancellor to the University in all
 " Causes as well of Office, as at the In-
 " stance of a Party; and from all Grie-
 " vances whatsoever, inflicted by the Vice-
 " chancellor either judicially or extrajudici-
 " ally. Provided nevertheless; that no Person
 " *in Statu pupillari* may interpose such Ap-
 " peal himself; but that his Tutor may have
 " a Liberty of interposing and prosecuting
 " such Appeal in the Name of his Pupil." (f)

Now the same *Canon and Civil Laws*, which allow Appeals from Sentences, in Causes of

(f) By a Grace, passed Feb. 13, 1593. it was enacted,
Ut in omni deinceps appellatione, quaelibet pars appellans,
una cum Advocato, Patrono, et Procuratore suo, statim post ap-
pellationem suam praetet juramentum corporale, coram judice a
quo, quod in conscientia sua justam habeat appellandi causam.

By another Grace, passed Octob. 24, 1609. it was enacted
 that, Juxta tenorem Statutorum Academiae nostrae *Principales*
Personae factum ipsum per se proponant, viz. Actor per se su-
am Actionem, et Reus suam Detensionem; nec Defensores vel
Procuratores admittantur pro iisdem nisi adversâ valetudine, vel
legitima causa, per Dominum approbanda, sint detenti, quo minus
in iudicio suam praesentiam possint exhibere; de quibus in prin-
cipio coram Domino Procancellario, vel Commissario, vel De-
legatis Judicibus, fidem faciant Juramento; a quo praefrito et
causa utrinque declarata, et non antea, admittantur, his omni-
bus, ut praecipitur, factis et observatis. So that, according to
 the Laws in being, a Boy of Fourteen Years of Age must, at
 the Will of the Judge, plead his own Cause; and appeal under
 the Obligation of an Oath, declaring in his Conscience
 that he hath just Cause of Appealing: unless we interpret, that
 a Person *in Statu pupillari*, is not *sui Juris*, but that *his Tu-*
tlor is his legal Representative, and the proper *principalis Per-*
sona, who is to state his Pupil's Case in Court, and to inter-
 pose an Appeal for him,

Office

Office and Causes of Instance, allow Appeals likewise from *Grievances*, extrajudicial as well as judicial. And you have given a good Reason from the *Author of the Practise of Spiritual Courts*, why the Grievances are not specified in the Grace; because, *to enumerate all Grievances, is not within the Bounds of any Man's Knowledge or Fore-sight* (*t*). Nor do we demand a Liberty of Appealing in any Case, where those *Laws* do not allow it. “ But then,” in every Instance, “ Whether an Appeal lies or no, must be debated before the Judge *ad quem*, and is never in the Power of the Judge *a quo*, to determine. For that would be for the inferior to determine and pronounce against the superior's Jurisdiction, and might prevent all Appeals, how just and legal soever (*u*).”

As to the restraining Clause in our Grace, we have not the Authority of the eminent *Lawyer*; or of Dr. *Andrews*, to support it; so that it must rest entirely on its own Credit; and we desire only to have the Judgment of the Senate upon it. Indeed, you

(*t*) Further Inqu. p. 70 note *w.*

(*u*) Dr. *Andrews*'s Opinion on the Case of Mr. *Campbell*.

have made one plausible Objection to it ; which, as I am contending only for Truth and Justice, I will by no Means pass over.

“ As the Tutor need never take the Oath,
 “ unless he has an Inclination so to do, and
 “ the Pupil could have no Relief, unless he
 “ should take it ; the former might, and pos-
 “ sibly sometimes would, deprive the latter
 “ of this Right of Appeal, even in Cases
 “ of real Grievance (x).”

I was very glad to see you express so much Tenderness in Behalf of the Pupils, who cannot speak for themselves. For a young Nobleman, or poor Lad, who were matriculated yesterday, have the same Right of Appeal with the oldest Member of the Senate. But surely, Sir, this Objection bears a little too hard on the Virtue of Tutors, their Honour, and Fidelity ; who, though they are bound by the strong Ties of Duty and Interest, to maintain the Discipline of the University, the Dignity and Authority of its Magistrates, and in a particular Manner the Subjection of the younger Scholars ; yet are they reciprocally bound by the same Ties, to maintain the Safety, the Liberties and Pro-

(x) Inquiry p. 66.

erties of their Pupils. Wherefore, I cannot help considering them, with your Adversary, as the only *indifferent Persons* (*y*), fit to have so important a Trust reposed in them. And in all such Instances of Appeals in Causes of Correction and Discipline, which I or you remember, none but Tutors have been deligated by the University to hear and determine them.

You will hardly believe what I am going to say, but yet it is true. You yourself are of Opinion, that Tutors are the only equal Judges betwixt the Vicechancellor and

(*y*) Opinion, &c. p. 52. Another Circumstance worth considering in this Place is, that the Tutor always attends the Cause of his Pupil in the Vicechancellor's Court; and consequently is best qualified to judge what Grounds there are for an Appeal. How Tutors and Pupils were formerly connected, may appear from the following Extracts out of the Acts of the V—chancellor's Court.

October 13, 1616. Officium Domini imploratum per Magistrum Ramsey jun. Procuratorem, for a Libel, &c. v. Ricardum Weypoole Scholarem Christi et Pupillum Magistri,—et Radulphum Adams Scholarem Magdaleneae Pupillum Magistri Scarlet ejusdem.

Nov. 18, 1616. Praesentibus Magistris Scarlet et Siddall Tutoribus, et Weypoole et Adams.

After Examination of Witnesses, is this Entry, Et postea Dominus ad petitionem Magistri Procuratoris publicavit dicta et depositiones Testium praedict. et decrevit Partibus copias, in praesentia Magistrorum Siddall & Scarlet, Weypoole et Adams dissentientium, &c. et petentium Consilium, &c. sibi assignari, &c.

Et postea Adams, et ejus Tutor Magister Scarlet, did refer this Matter wholly to Mr. Proctor's Mercy.

Pupils,

Pupils. For there is no other possible way of reconciling the two Extremes you have maintained, but by taking the middle Point between them. At one time you are afraid, that, out of Zeal for the Authority of the Governors of the University, they should deprive their Pupils of the Exercise of their Right of Appeal, even in Cases of real Grievance. At another Time, you are afraid, " that the intimate Connections which the Tutors have with the young Students, " may sometimes tempt them to excuse or " extenuate their Offences ; that these intimate Connections may dispose them to " ward off part of their Punishment on some " Occasions ; that this Disposition may be " the stronger, if they have some Degree " of Friendship and Acquaintance with the " Families to which they belong ; and " stronger still, if they have Connections of " Interest with or Expectations from those " Families : and this, you say, is not spoken " at Random, or from Suspicion only : for " Somebody is much mistaken in his Observations, if he has not seen this sometimes done (z)." Surely, Sir, you forget,

(z) Further Inqu. p. 65.

or

or do not regard, the Oath which the Tutor is obliged by this Grace to take, before his Pupil can have the Benefit of an Appeal. Who this *Observer* is, I cannot say, but am verily persuaded, that he is mistaken in the Persons to whom these Observations are applied. Other Persons, not Tutors, have practised this Art of screening young Offenders of Quality, with Success: and I dare say, that you can remember *at least one remarkable Instance*. I have lived many Years in the University, and do not know a single Example of a Tutor getting Preferment by the Favour or Recommendation of his Pupils. And your Cruelty is not to be forgiven for throwing such invidious Shades on the Characters of a Set of Men, who spend the best part of their Lives in the difficult and useful Employment of inculcating Learning and good Manners, *in maintaining the Credit and flourishing State of the University in general*, with the humble Prospect of retiring in their old Age to a College Living. And it moves their just Indignation, to be thus insulted and trampled under Foot by a Man, whom Fortune, not Merit, whom nothing but a whimsical Co-
incidence

incidence of rare Events hath lifted over their Heads.

After all that hath been said of the Clause in this Grace, if you will shew, that it hath the least Tendency to alter the Constitution of the University; if it be at all contrary to Queen Elizabeth's 42d Statute, which expressly forbids all such Alterations or Innovations (a): I will answer for the Gentlemen who recommended and offered it, solicitous as they are for the Security of the Vice-chancellor's Authority, that they may be prevailed upon, to drop it entirely.

I shall only add a few loose Strictures on your particular Treatment of the Editor of the Opinion, &c. and then leave you to your own private Thoughts.

i. That Writer had observed, that a certain Set of Men, by endeavoring for a long Time to deceive others, have in the End deceived themselves: And, that it cannot be expected that such grave and wise Men, should reverence Quotations drawn from Heathen Writers (b). It is not at all probable that this Author, who seems to have a good Command of Words, should include

(a) Furth. Inqu. p. 61.

(b) Opin. &c. p. 14.

the whole of that honorable as well as useful Profession of the Law, within the narrow Compass of a certain Set of Men. And, I believe, you are the only Reader who thus understood him (*c*). The Observation was plainly designed for *a certain Set of Divines*, who have been a long Time endeavoring to deceive others by their false Representations of the University of Cambridge. Tho' I can by no means approve such indiscriminate Reproaches, yet it is but common Justice, to use a horney Phrase, *to set the Saddle on the right Horse.* You felt your own Withers wrung, and was, no doubt, very glad to shift off the Load, without caring upon whose Shoulders it lighted.

2. You think your Adversary *justly intitled to a School-whipping, for not being able to construe the very Grace* (*d*), which, it is not unlikely, he was concerned in drawing up. *And at the same Time, as you go on, that his WANT OF HONESTY might keep exact Peace with his WANT OF KNOWLEDGE, NOT THE LEAST MENTION IS MADE OF THE APPEAL AB OMNI GRAVAMINE*

(*c*) Furth. Inqu. p. 29.

(*d*) Furth. Inqu. p. 65.

UTCUNQUE ILLATO, tho' it is certainly one of the most substantial Parts of that Grace, the Substance of which he pretends to lay before the Readers. And yet within twenty Lines after, you declare, that *the Ignorance and Confidence of this Author are equally the Subjects of your Amazement*, when he affirms, that, **THE APPEAL AB OMNI GRAVAMINE UTCUNQUE ILLATO, IS NOTHING BUT REASONABLE, AS THE STATUTES MAKE NO DISTINCTION, AND THE PRACTICE AS WELL AS LAW OF THE UNIVERSITY, EQUALLY AUTHORIZES APPEALS IN EVERY CASE.**

3. He had observed that *all frivolous Appeals are expressly provided against by a considerable pecuniary Caution; that the Delegates themselves are, in Effect, of the supreme Magistrate's own Appointment; for Delegates are nominated by the Caput, and THE CAPUT IS IN EFFECT, APPOINTED BY THE VICECHANCELLOR AND HEADS OF COLLEGES (e).* The Observation, you see, is made on a *Matter of Fact*, on the Manner in which the Caput is appointed. And you undertake to prove the *Falseness* of it, by an Explanation of the Manner in which

(e) Opin. &c. p. 41.

the

the Caput ought to be elected. For by the 41st Statute *de Capite eligendo*, each of the two Proctors bath an equal Share in the Nomination of the Caput, with the Vicechancellor himself (f). But it is too true, what the one hundred and Sixty Four Regent and non regent Masters objected to this Statute, that " the naming of Fifteen, the Vicechancellor " and each Proctor Five, is only for shewe, " in Effect nothing; for commonlie, whom " the Vicechancellor names, they are sure " to be chosen (g)." And ever since I have known any thing of University Affairs, the Doctors and Scrutators have implicitly accepted the Five Men, whom the Vicechancellor named.

4. Altho' he professes on every Occasion, to have testified the sincerest Honor for our Chancellor, and to venerate him, as the Protector and Patron of the University (b); yet you are resolved to proscribe him with all those unfortunate Gentlemen, who were once so indiscreet as to own their Zeal for the Heir apparent to the Crown. How could you so indecently afflict our Minds with the

(f) Farth. Inqu. p. 71.

(g) MS. in C. C. C. Library.

(b) Opin. &c. p. 57.

Memory of a Loss which the whole Nation has so lately, so sincerely lamented (*i*)? But as if those Colors could not paint him black enough; as if you feared that our Chancellor's Soul was too great to resent past Injuries from misguided cloistered Schoolmen; you must needs rank him amongst *the Hey-lyns, the Filmers, the Brady's of the last Age, and the—s of this* (*k*): Because he seems to differ in Opinion from you, upon one of the obscurest Parts of our *English History*; for *his natural and political Capacities are so bad* (*l*), as to make him *think*, that the Rise of the House of Commons *is not usually* carried higher than the Reign of *Henry the Third* (*m*). And this is your Proof of so heavy an Accusation! This Author's Name, Sir, may not always be kept secret; tho', at present, I am well persuaded, it is a Secret to you. How will you be covered with Confusion, when you see his Face; if he should appear, to be one of the earliest Adherents to the Duke of *Newcastle*; if he should appear, for you love Party Denominations, to be one of the firmest *Whiggs* in

(*i*) Furth. Inqu. p. 63.

(*k*) Furth. Inqu. p. 80.

(*l*) Ibid. p. 58.

(*m*) Opin. p. 64.

the University of *Cambridge*? You too well know, that the greatest Number of Affertors of Appeals, are to be found in each of those Lists.

As you have not thought fit to prefix your Name to the Books you have published on *the Right of Appeal*, you cannot expect to see mine subscribed to this Letter. Whenever you own yourself publickly, you shall soon after be acquainted with the Name of,

S I R,

Your humble Servant.

POST.

POSTSCRIPT.

WHILST these Sheets were in the Press, the following Grace passed unanimously, in the fullest Congregation that has been seen, since our Disseensions began.

Cum controversiae quædam ortæ sint de Jure appellandi a Domino Cancellario vel Procancellario ad Universitatem; quo certius aliquid de eo in perpetuum statuatur;

Placeat vobis, ut Orator vester per Literas ad illustrissimum Principem Thomam Holles Ducem Novi castri Cancellarium vestram, honoratissimum Philippum Baronem de Hardwick, summum Senescallum vestrum, reverendissimum Patrem Thomam Episcopum Londinensem, honoratissimum Gulielmum Lee Equitem Justiciarum sumnum, honoratissimum Georgium Lee, Equitem LL. D. datas, supplicet iis, ut vobis permittant Statuta, Privilegia, et Consuetudines Academiæ, quæ ad hoc Jus spectant, eorum Judiciis submittere; & ut coram iis Causam exponant sex Legum periti, tres ex

una

una parte, tres etiam ex altera constituti. Quicquid vero viri nobilissimi vel major eorum Pars decreverint consentaneum esse Statutis, Privilegiis, et Consuetudinibus Academiæ, id Auctoritate vestra pro Rato habeatur, & in Libris Procuratorum inscribatur.

Placeat etiam vobis, ut hoc Negotium curent ex una Parte D^{nus} Procancellarius, Dr. Joannes Green, et Dr. Chapman; ex altera autem Parte, Mr. Bickam, Mr. Smith Collegii Regalis, et Mr. Balguy: et ut sumptus idonei e communi cistâ solvantur.

Lect. et Concess. Mat. 13. 1752.

A venerable Tribunal! where your Mistakes and mine will be sufficiently exposed; where, what is of real Moment to the Public, the Rights and Privileges of the University of Cambridge will be determined to all future Ages. The kind Condescension of these great Men, in accepting such an Arbitration, must reflect the highest Honor on the University, nor will they, perhaps esteem it a small Compliment from the University, that they lay the Liberties of themselves and of Posterity at their Feet.

N. B. *The*

And tho' you have taken Pains to render our Chancellor a Partisan against us ; tho' you have described us as attempting to *curtail his Power, to degrade his Dignity*; yet we all of us agree to submit our Cause, with the most unfeigned Pleasure, to his inflexible Justice.

N. B. *The References in the foregoing Sheets to Hare's Collections, are made to that Copy, which is in the Custody of the Register of the University.*

E R R A T U M.

Page 27. l. 10. for impossible r. possible.